From: Patent, Lawrence B. [mailto[redacted]
Sent: Tuesday, October 04, 2011 2:19 PM
To: [Sarah Josephson]; [Tim Karpoff]; [Phyllis Cela]
Cc: [Gary Barnett]; [Jeff Burns]; [Eileen Donovan]; [Mark Fajfar]; [Erik Remmler]; [Vivek Jain]; [Ted Kneller]; [Barry McCarty]; [Pete Sanchez]; [david Stawick]; Gonzalez, Lourdes; Oh, Cindy; Page, Karishma S.
Subject: The Church Alliance Follow Up to Meeting on September 9 at CFTC

Dear Sarah, Tim, and Phyllis:
On behalf of the Church Alliance, I would like to thank you and your colleagues for meeting with me, Andy Hendren, and Karishma Page on September 9, 2011. We appreciated the opportunity to discuss with you the unique issues impacting church plans.
In follow up to our discussion, please find attached two items. First, attached is a document that discusses a possible rule that would allow for church plans to opt-in to Special Entity status. Second, attached is a document that provides draft language to clarify the status of church plans and that discusses the legal and historical background of church plans.
Feel free to share with the appropriate individuals. We are also submitting these items in hard copy. Please do not hesitate to be in touch with questions or for additional information. Thank you for your consideration and for your help in assuring that individuals who dedicate their lives to working for religious institutions are not disadvantaged in terms of the treatment of their employee benefits.

Regards,

Larry

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MEMORANDUM

To CFTC

From K&L Gates LLP, on behalf of the Church Alliance

Date October 4, 2011

Re Special Entity Definition – Opt-In for Church Plans

This memorandum is in follow up to the meeting on September 9, 2011 between representatives of the Church Alliance and the Commodity Futures Trading Commission ("CFTC"). Per your request, this memorandum discusses the issue of how to classify "church plans" for purposes of various regulations under Dodd-Frank.

Although Dodd-Frank refers in several places to any employee benefit plan *defined in* Section 3 of ERISA, which would include church plans, you have indicated that staff may recommend to the Commissions that this phrase be limited to any employee benefit plan *subject to* ERISA in adopting relevant final regulations, with a separate reference to "governmental plans" as provided in Dodd-Frank. Thus, governmental plans would be the only employee benefit plans not subject to ERISA that would be specifically referred to in the regulations under Dodd-Frank, leaving church plans, among others, in limbo.

The Church Alliance recommended in several comment letters to the Commissions that this issue be addressed by giving effect to the plain meaning of the statute and thereby treating all employee benefit plans defined in Section 3 of ERISA in the same manner. You indicated that, as an alternative, there may be a willingness to consider an approach in the final business conduct standards regulations that would permit church plans to "opt in" to being treated like employee benefit plans that are subject to ERISA for purposes of regulations adopted under Dodd-Frank.

In its previous comment letters, the Church Alliance recommended an approach that gives plain meaning to the text of Dodd-Frank and treats all employee benefit plans the same for purposes of all regulations adopted under that statute. The Church Alliance is concerned that potential counterparties would be unsure as to the status of church plans when comparing Dodd-Frank and the regulations promulgated thereunder, and that the legal uncertainty created would cause potential counterparties to refuse to deal with church plans in swap transactions. The Church Alliance, however, concurs that an opt in regime for the business conduct standards regulations is a preferable approach. In the attached materials, the Church Alliance puts forth suggestions for regulatory text that would permit church plans to opt in to being treated like employee benefit plans subject to ERISA for purposes of regulations being adopted under Dodd-Frank.

It is important to note that the opt in regime for the business conduct standards regulations does not alleviate the need to clarify the status of church plans for purposes of other regulations under Dodd-Frank. Consequently, the Church Alliance is also recommending that the text of the definitions of major swap participant and major security-based swap participant be revised so that it will be clear that church plans will be treated in the same manner as employee benefit plans subject to ERISA and governmental plans for purposes of those definitions without the need for an opt in. We recommend the latter regulatory text changes because we believe that all church plans will want to have their swap and security-based swap positions used for hedging and risk mitigation excluded from the computation to determine whether an entity is a major swap participant or a major security-based swap participant without the need to "opt in" for such treatment. We recognize that the thresholds for determining whether an entity is a major swap participant or a major security-based swap participant will be set at levels that church plans would be unlikely to exceed, but we nevertheless believe that the regulatory text should be revised to provide greater legal certainty and to be consistent throughout the regulations.

We have noted in the following pages suggested revised regulatory text with strike outs and underlining to indicate the text that we believe should be deleted and added, respectively, as well as separate regulations for the church plans opt in procedure. As noted, when you make these changes, preamble discussion of these issues should be similarly revised.

We hope that this information is helpful. Please contact us if we can further assist you or if you have any additional questions regarding this matter. Thank you for your time and consideration of the position of the Church Alliance.

REVISED TEXT FOR CFTC REGULATION 23.401, DEFINITION OF SPECIAL ENTITY

Special Entity. The term Special Entity means:

(1) A Federal agency;

(2) A State, State agency, city, county, municipality, or other political subdivision of a State ~~or~~;

(3) Any employee benefit plan~~, as defined in Section 3 of~~ subject to regulation under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(4) Any governmental plan, as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); ~~or~~

(5) Any church plan, as defined in Section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), including an organization described in Section 3(33)(C)(i) of such Act (a "church benefits board") and the plans it maintains, if the church or convention or association of churches or church benefits board that maintains the church plan or plans makes an election in accordance with the provisions of § 23.403 and such election has not been withdrawn; or

(~~5~~6) Any endowment, including an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

*****

NEW REGULATION

§ 23.403 Election by church plans.

(a) Any church plan (as defined in paragraph (5) in Section 23.401 of this chapter) that wishes to be treated as a "Special Entity" for purposes of this part and the de minimis exception to the swap dealer definition in Section 1.3(ppp)(4)(i) of this chapter, or as a "Financial Entity" or a "Category 2 Entity" for purposes of Parts 23 and 39 of this chapter, shall file a notice so stating electronically with National Futures Association through its electronic exemption filing system, containing the following information:

(1) The name and main business address of the church plan making the election;

(2) The name and telephone number of the person filing the notice, who must be authorized to bind the church plan; and

(3) The status or statuses elected by the church plan.

(b) The election notice must be filed with National Futures Association prior to the date upon which the church plan intends to claim a particular status, and the notice shall be effective upon filing.

(c) In the event that any of the information contained in the notice becomes inaccurate or incomplete, the church plan shall, within fifteen (15) business days of its knowledge of such inaccurate or incomplete information, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete.

(d) *Annual Notice*. Each church plan that has filed a notice under this section must, within 30 days of the end of the calendar year through National Futures Association's electronic exemption filing system, affirm, amend or withdraw the notice. Failure to do so within that 30-day period shall be deemed to be a request for immediate withdrawal. Any such amendment or withdrawal of the notice shall have no effect on any agreement, contract or transaction previously entered into.

REVISED TEXT FOR CFTC REGULATION 1.3(ppp)(4)(i), DEFINITION OF SWAP DEALER, DE MINIMIS EXCEPTION

(ppp) *****

(4) ***

(i) The swap positions connected with those activities into which the person enters over the course of the immediately preceding 12 months have an aggregate gross notional amount of no more than $100 million, and have an aggregate gross notional amount of no more than $25 million with regard to swaps in which the counterparty is a "special entity" (as that term is defined in Section ~~4s(h)(2)(C) of the Commodity Exchange Act~~23.401 of this chapter). For purposes of this paragraph, if the stated notional amount of a swap is leveraged or enhanced by the structure of the swap, the calculation shall be based on the effective notional amount of the swap rather than on the stated notional amount.

*****

REVISED TEXT FOR CFTC REGULATION 1.3(qqq)(1)(ii)(A), DEFINITION OF MAJOR SWAP PARTICIPANT

(qqq) ***

(1) ***

(i) ***

(ii)(A) That maintains a substantial position in swaps for any of the major swap categories, excluding both positions held for hedging or mitigating commercial risk, and positions maintained by any employee benefit plan (or any contract held by such a plan) subject to regulation under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) ~~as~~or defined in paragraphs ~~(3) and~~ (32) and (33) (including an organization described in paragraph (33)(C)(i)) of Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

*****

REVISED TEXT FOR CFTC REGULATION 39.6, END-USER EXCEPTION TO CLEARING

§ 39.6 Electing to use the end-user exception to mandatory swap clearing.

(a) A counterparty to a swap (an "electing counterparty") may elect to use the exception to mandatory clearing under section 2(h)(7)(A)(iii) of the Act if the electing counterparty is not a "financial entity" as defined in section 2(h)(7)(C)(i) of the Act or is not the type of "Special Entity" that makes the election described in paragraph (5) in Section 23.401 of this chapter, is using the swap to hedge or mitigate commercial risk as defined in § 39.6(c), and provides or causes to be provided to a registered swap data repository or, if no registered swap data repository is available, the Commission, the information specified in § 39.6(b). More than one counterparty to a swap may be an electing counterparty. If there is more than one electing counterparty to a swap, the information specified in § 39.6(b) shall be provided with respect to each of the electing counterparties.

(b) ***

(1) ***

(2) Whether the electing counterparty is a "financial entity" as defined in section 2(h)(7)(C)(i) of the Act or is the type of "Special Entity" that makes the election described in paragraph (5) in Section 23.401 of this chapter;

*****

REVISED TEXT FOR CFTC REGULATION 23.505, END USER EXCEPTION DOCUMENTATION

(a) ***

(3) That the counterparty is a non-financial entity, as defined in section 2(h)(7)(C) of the Act and is not the type of "Special Entity" that makes the election described in paragraph (5) in Section 23.401 of this chapter;

*****

REVISED TEXT FOR CFTC REGULATION 23.150, MARGIN REQUIREMENTS FOR UNCLEARED SWAPS – PARAGRAPH (3) OF THE DEFINITION OF FINANCIAL ENTITY THEREUNDER SHOULD BE REVISED TO READ AS FOLLOWS:

*****

(3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income ~~and~~ Security Act of 1974 or the type of "Special Entity" that makes the election described in paragraph (5) in Section 23.401 of this chapter,

*****

REVISED TEXT FOR CFTC REGULATION 39.5, REVIEW OF SWAPS FOR CFTC DETERMINATION REGARDING MANDATORY CLEARING

(e) ***

(1) ***

Category 2 Entity means (1) a commodity pool; (2) a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 other than an active fund; (3) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income ~~and~~ Security Act of 1974 or the type of "Special Entity" that makes the election described in paragraph (5) in Section 23.401 of this chapter; or (4) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, *provided that,* in each case, the entity is not a third-party subaccount.

*****

REVISED TEXT FOR CFTC REGULATIONS 23.175 AND 23.575, IMPLEMENTATION OF TRADING DOCUMENTATION AND MARGINING REQUIREMENTS [MAKE THE SAME REVISIONS IN BOTH REGULATIONS]

(a) ***

Category 2 Entity means (1) A commodity pool; (2) a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 other than an active fund; (3) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income ~~and~~ Security Act of 1974 or the type of "Special Entity" that makes the election described in paragraph (5) in Section 23.401 of this chapter; or (4) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, *provided that,* in each case, the entity is not a third-party subaccount.

*****

[NOTE: ANY PREAMBLE DISCUSSION OF THE FOREGOING ISSUES SHOULD BE SIMILARLY REVISED]

REVISED TEXT FOR SEC REGULATION 240.15Fh-1 and 240.15Fh-2, DEFINITION OF SPECIAL ENTITY

Sections 240.15Fh–1 through 240.15Fh–~~6~~7 and 240.15Fk–1 are also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

* * * * *

2. Add §§ 240.15Fh–1 through 240.15Fh–~~6~~7 to read as follows:

Sec.

240.15Fh–1 Scope.

240.15Fh–2 Definitions.

240.15Fh–3 Business conduct requirements.

240.15Fh–4 Special requirements for security-based swap dealers acting as advisors to special entities.

240.15Fh–5 Special requirements for security-based swap dealers and major security-based swap participants acting as counterparties to special entities.

240.15Fh–6 Political contributions by certain security-based swap dealers.

240.15Fh-7 Election by church plans.

§ 240.15Fh–1 Scope.

Sections 240.15Fh–1 through 240.15Fh–~~6~~7, and 240.15Fk–1 are not intended to limit, or restrict, the applicability of other provisions of the federal securities laws, including but not limited to Section 17(a) of the Securities Act of 1933 and Sections 9 and 10(b) of the Act, and rules and regulations thereunder, or other applicable laws and rules and regulations. Sections 240.15Fh–1 through 240.15Fh–~~6~~7, and 240.15Fk–1 apply, as relevant, in connection with entering into security-based swaps and continue to apply, as appropriate, over the term of executed security-based swaps.

§ 240.15Fh–2 Definitions.

As used in §§ 240.15Fh–1 through 240.15Fh–~~6~~7:

*****

(e) Special entity means:

(1) A Federal agency;

(2) A State, State agency, city, county, municipality, or other political subdivision of a State;

(3) Any employee benefit plan~~, as defined in Section 3 of~~ subject to regulation under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(4) Any governmental plan, as defined in section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32));~~ or~~

(5) Any church plan, as defined in Section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), including an organization described in Section 3(33)(C)(i) of such Act (a "church benefits board") and the plans it maintains, if the church or convention or association of churches or church benefits board that maintains the church plan or plans makes an election in accordance with the provisions of § 240.15Fh-7 and such election has not been withdrawn; or

(~~5~~6) Any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

*****

NEW REGULATION

§ 240.15Fh-7 Election by church plans.

(a) Any church plan (as defined in § 240.15Fh-2(e)(5)) that wishes to be treated as a "Special Entity" for purposes of §§ 240.15Fh-4 and 240.15Fh-5, or as a "Financial Entity" for purposes of § 240.3Cg-1, shall file a notice so stating in the form and manner specified by the Commission, containing the following information:

(1) The name and main business address of the church plan making the election;

(2) The name and telephone number of the person filing the notice, who must be authorized to bind the church plan; and

(3) The status or statuses elected by the church plan.

(b) The election notice must be filed prior to the date upon which the church plan intends to claim a particular status, and the notice shall be effective upon filing.

(c) In the event that any of the information contained in the notice becomes inaccurate or incomplete, the church plan shall, within fifteen (15) business days of its knowledge of such inaccurate or incomplete information, amend the notice as may be necessary to render the notice accurate and complete.

(d) *Annual Notice*. Each church plan that has filed a notice under this section must, within 30 days of the end of the calendar year, affirm, amend or withdraw the notice. Failure to do so within that 30-day period shall be deemed to be a request for immediate withdrawal. Any such amendment or withdrawal of the notice shall have no effect on any agreement, contract or transaction previously entered into.

REVISED TEXT FOR SEC REGULATION 240.3a67-1(a)(2)(i), DEFINITION OF MAJOR SECURITY-BASED SWAP PARTICIPANT

(a) ***

(2) ***

(i) That maintains a substantial position in security-based swaps for any of the major security-based swap categories, excluding both positions held for hedging or mitigating commercial risk, and positions maintained by any employee benefit plan (or any contract held by such a plan) subject to regulation under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) ~~as~~ or defined in paragraphs ~~(3) and~~ (32) and (33) (including an organization described in paragraph (33)(C)(i)) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

*****

REVISED TEXT FOR SEC REGULATION 240.3Cg-1(a)(2), END-USER EXCEPTION TO CLEARING

(a) ***

(2) Whether the counterparty invoking the clearing exception is a ‘‘financial entity’’ as defined in Section 3C(g)(3) of the Act (15 U.S.C. 78c-3(g)(3)) or is the type of "Special Entity" that makes the election described in § 240.15Fh-2(e)(5);

*****

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MEMORANDUM

To CFTC

From K&L Gates LLP, on behalf of the Church Alliance

Date October 4, 2011

Re Church Plans – Definitions and Legislative History

This memorandum is in follow up to the meeting on September 9, 2011 between representatives of the Church Alliance and the Commodity Futures Trading Commission ("CFTC"). Per your request, this memorandum: (1) proposes draft language providing clarification on the status of church plans and church benefits boards; (2) discusses the status of church plans and church benefits boards; and (3) history of and legal authority for church benefits boards to commingle assets for investment purposes.

We hope that this information is helpful. Please contact us if we can further assist you or if you have any additional questions regarding this matter. Thank you for your time and consideration of the position of the Church Alliance.

(1) Draft language providing clarification on the status of church plans and church benefits boards.

We recommend that the Commodity Futures Trading Commission ("CFTC") in its rulemaking under the Dodd-Frank Act use the following language in defining a church plan:

> An employee benefit plan, as defined in section 3 of ERISA, shall include a church plan as defined in section 3(33) of ERISA or section 414(e) of the Code, including a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches, or any company or account that is
>
> (A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of the Code and
>
> (B) substantially all of the activities of which consist of
>
> a. managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under the Internal Revenue Code of 1986 or

b. administering or providing benefits pursuant to church plans.

This language reflects two unique characteristics of church plans. First, it provides clarification on the status of church plans and church benefits boards. Second, it recognizes the ability of church benefits boards to commingle assets for investment purposes.

(2) Status of church plans and church benefits boards.

The Church Alliance was formed in 1975 as the "Church Alliance for Clarification of ERISA" to address the issues presented for established church plans by the Employee Retirement Income Security Act of 1974 ("ERISA"). ERISA, when enacted in 1974, threatened the ability of church plans to continue to be structured as they had been, in some cases, for over 200 years.

The original definition of "church plan" in both ERISA and the Internal Revenue Code ("Code") did not reflect actual church plan operations. The first part of the original church plan definition was satisfactory. Under it, a church plan was "a plan established and maintained for its employees by a church or by an association or convention of churches which is exempt from tax under Code section 501".

However, the original church plan definition was problematic in its treatment of church agencies, whose employees, in many cases, had historically received pension and welfare benefits from church plans. More specifically, the original church plan definition provided, in effect, that only the employees of church agencies for which the plan was maintained on January 1, 1974 could participate in the plan – no new church agencies could be admitted to the plan. In addition, the original definition provided that, after December 31, 1982, the plan would not be a church plan if it covered the employees of any church agency, i.e., church-controlled employers (non-steeples) like schools, charities, etc.

Congress revised the definition of "church plan" when it passed the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") to address this issue and to ensure that employees of a church-related nursing home, inner-city agency, children's home, college or hospital could continue to receive pension and welfare benefits from a church plan. Under the revised definition, a church plan could continue to provide retirement and welfare benefits for the employees of all church agencies.

The revised definition in ERISA and the Code made clear that a "church plan" includes a "plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." As a result, church benefit boards essentially are synonymous with church plans under the Code (and ERISA). Section 414(e)(3)(A) of the Code is identical to ERISA section 3(33)(C)(i), and church pension boards are also sometimes referred to as Section 414(e)(3)(A) organizations.

We recommend that the CFTC in its rulemaking under the Dodd-Frank Act use the same language in defining church plans as "employee benefit plans as defined in section 3 of ERISA" to provide certainty on the status of church plans and to ensure consistency with ERISA and the Code.

(3) Ability of church benefits boards to commingle assets for investment purposes.

Church denominations have organized themselves so that church pension boards are typically the entities that handle investments for the denomination's benefit plans and for other church assets, including some church endowments. The use of church benefits boards is more administratively efficient, and such boards have greater resources, investment skills, and market clout than the individual churches and other denominationally affiliated organizations that contribute to the boards.

By way of background, in 1982, the IRS held (in Rev. Rul. 82-102) that only insurance companies could provide section 403(b) annuities. Because many church pension boards maintained 403(b) plans but not through insurance companies, Congress enacted a legislative clarification allowing church 403(b) plans and programs to continue to operate. A provision included in the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") created section 403(b)(9) of the Code.

The legislative history under TEFRA expressly recognized the right and authority of church benefits boards to hold, on a commingled basis for investment purposes, the assets of church plans with other general church assets. "**The conferees intend that the assets of a church plan (sec. 414(e)) may be commingled in a common fund with other amounts devoted exclusively to church purposes (for example, a fund maintained by a church pension board) if that part of the fund which equitably belongs to the plan is separately accounted for and cannot be used for or diverted to purposes other than for the exclusive benefit of employees and their beneficiaries**". (TEFRA Conf. Rept. Pub. L. 97-248, 1982-2 C.B. 462, *524-5*).

IRS regulations under Code Section 403(b) also expressly recognized the right and authority of church benefits boards to hold, on a commingled basis for investment purposes, the assets of Code Section 401(a) qualified plans, Code Section 403(b) plans, and other non-plan church-related assets. Internal Revenue Service Reg. Sec. 1.403(b)-9(a)(6); also see Internal Revenue Service Pvt. Ltr. Rul. 200229050 (July 19, 2002).

The National Securities Markets Improvement Act of 1996 (NSMIA) included provisions clarifying that church plans and their investment pools are not subject to the Investment Company Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, or the Investment Advisors Act of 1940. The NSMIA also preempted state "blue sky" laws, with respect to church plans, that require registration or qualification of securities, as well as state laws applicable to investment companies or brokers, dealers, investment advisors or agents.

Specifically, section 3(c)(14) of the Investment Company Act exempts:

> (14) **Any church plan** described in section 414(e) of the Internal Revenue Code of 1986 [26 USCS § 414(e)], if, under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries, **or any company or account that is--**
>
> > (A) **established by a person that is eligible to establish and maintain such a plan under section 414(e)** of the Internal Revenue Code of 1986 [26 USCS § 414(e)]; and
> >
> > (B) substantially all of the activities of which consist of--
> >
> > > (i) **managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans** under the Internal Revenue Code of 1986 [26 USCS § § 1 et seq.]; or
> > >
> > > (ii) administering or providing benefits pursuant to church plans.

Section 3(a)(13) of the Securities Act, section 3(a)(12(A)(vi) and section 3(g) of the Securities Exchange Act, and section 203(b)(5) of the Investment Advisors Act contain corresponding exemptions which refer to section 3(c)(14) of the Investment Company Act.

Taken together, these acts make clear that church plans maintained by church benefit boards may commingle Section 403(b)(9) and Section 401(a) retirement plan assets with other church-related assets for investment purposes. The language of section 3(c)(14) of the Investment Company Act can serve as model language for the CFTC in its rulemaking under the Dodd-Frank Act when determining that church plans (and the benefit boards that maintain them) are "employee benefit plans as defined in section 3 of ERISA."

We recommend that the CFTC, for purposes of its rule-making under Dodd-Frank, define church plans in a manner that includes their related church benefits boards, which are fund accounts that are permitted to commingle church plan and other church-related assets for investment purposes.